

PN 109
INVESTMENTS
(RF) (Pty) Ltd

7 April 2025

Att: Licensing Department

Independent Communications Authority of South Africa

Block B

350 Witch-Hazel Avenue

Eco Park

Centurion

By email: licensing@icasa.org.za

RE: Submission on the Applications for the Transfer of Control of the individual Electronic Communications Network Service (I-ECNS), Individual Electronic Communications Service (I-ECS) and Radio Frequency Spectrum (RFS) Licences from Orbicom Proprietary Limited to Groupe Canal+ SAS

1. Introduction

- 1.1 **PN 109 Investments (RF) (Pty) Ltd (PN 109)** thanks the Independent Communications Authority of South Africa (**Authority**) for affording interested parties the opportunity to make written submissions on the Form G application filed with the Authority by Orbicom Proprietary Limited (**Orbicom**) for the transfer of control of the individual electronic communications network service licence (**I-ECNS**), the individual electronic communications service licence (**I-ECS**) and radio frequency licence held by Orbicom to Canal+ SAS (**Transfer Application**).
- 1.2 **PN 109** is one of the investors in Phuthuma Nathi Investments (RF) Limited (**Phuthuma Nathi**) - the broad-based black economic empowerment (**B-BBEE**) share scheme that holds 25% of the shares in MultiChoice South Africa Holdings Proprietary Limited (**MCSA Holdings**) which in turn owns 100% of the shares in Orbicom. **PN 109** thus has a clear and substantial interest in the Transfer Application.
- 1.3 **PN 109** is pleased to submit its written submission on the Transfer Application in response to the Authority's invitation for submissions published under Notice 6001 in Government Gazette No 52336 dated 18 March 2025.

2. PN 109's Submission

- 2.1 After having reviewed a redacted version of the Transfer Application, **PN 109** notes that Orbicom relies on Phuthuma Nathi's 25% shareholding in MCSA Holdings, which in turn owns 100% of the shares in Orbicom to demonstrate compliance with the B-BBEE ownership and contributor status requirements for the transfer to be approved by ICASA.¹

¹ The response to question 6.4 of Form G to the Transfer Application, it is specifically stated that - "Phuthuma Nathi Investments' (RF) Limited ("Phuthuma Nathi") is the MultiChoice Group's broad based black economic empowerment (B-BBEE) partner in South Africa. Established in 2006, Phuthuma Nathi is one of the most successful and longest running B-BBEE share schemes in South Africa, with over 80 000 Black (as defined in the Broad-Based Black Economic Empowerment Act, No. 53 of 2003) shareholders from all walks of life. Phuthuma Nathi owns 25% of the shares in MultiChoice South Africa Holdings (Pty) Ltd, which in turn owns 100% of the shares in Orbicom. The remaining effective Black ownership in Orbicom is held by Black shareholders in MultiChoice Group Limited, who have acquired their shares on the JSE. An effective 38.41% of the shares in Orbicom are held by Black persons, determined on a flow-through basis."

- 2.2 We further note that Appendix 9.1 to the Transfer Application, specifically addresses compliance with the 30% ownership and control interest by historically disadvantaged groups applicable to individual I-ECS and I-ECNS licences upon the completion of the transaction and states, *inter alia*, that:

"Following completion of the proposed transaction, Phuthuma Nathi's effective shareholding in Orbicom will increase to 40%, comprising (i) an indirect shareholding of 20% via MCSAH (i.e. 25% x 80%) and (ii) a direct shareholding of 20% in Orbicom."

- 2.3 Whilst Phuthuma Nathi's shareholding in Orbicom may well increase to 40% post Canal+ SAS' acquisition of the MultiChoice Group, we are unable to confirm or deny whether the position in respect of Orbicom's B-BBEE shareholding on the completion of the transaction and as described in Appendix 9.1 will in fact be the position in respect of Orbicom's B-BBEE shareholding. **PN 109** has had limited engagement with Canal+, the MultiChoice Group and Orbicom on the change in control in Orbicom and are thus simply not in a position to assess the implications that the change in control in Orbicom will have on their current investment in MCSA Holdings and whether in fact there will be an increase in Phuthuma Nathi's current shareholding in Orbicom to 40%. **PN 109** is also of the view that the Transfer Application should not be considered in isolation but rather against the broader backdrop of Canal's intended 100% acquisition of the MultiChoice Group, including control of the broadcasting licence held by MCSA Holdings.
- 2.4 As **PN 109** is not in a position to evaluate how the Transfer Application, if approved, would impact **PN 109's** shareholding in Phuthuma Nathi, **PN 109**, would be grateful if it could be afforded a further opportunity to provide comments on the Transfer Application to the Authority, once it has been furnished with sufficient information from Canal+, the MultiChoice Group and Orbicom so as to enable it to properly assess the impact of the change in control in Orbicom on its investment in MCSA Holdings as a significant Black shareholder in Phuthuma Nathi. We do want to acknowledge **PN 109's** engagement with Canal+ and the MultiChoice Group, though very late in the process.

3. Conclusion

PN 109 thanks the Authority for its consideration of this submission and confirms that it would be more than happy to engage further with the Authority in respect of the concerns highlighted in this submission and to participate in any formal hearings conducted by the Authority in respect of the Transfer Application, if required.

Yours faithfully



Manoj Parekh